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REPORT
101-366

POLLUTION PROSECUTION ACT OF 1990

JULY 13 (legislative day, JULY 10), 1990.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2176]

The Committee on Environment and Public Works to which was referred the bill (S. 2176) to provide better enforcement of the environmental laws of the United States, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

GENERAL STATEMENT

The purpose of the reported bill is to provide the Environmental Protection Agency (EPA) with resources needed to enforce our environmental laws and to ensure that those involved in enforcement receive consistent and excellent training.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short title

This Act may be cited as the "Pollution Prosecution Act of 1990".

Section 2.—EPA Office of Criminal Investigation

This section provides for an increase in EPA criminal investigators (also known as Special Agents) devoted to criminal enforcement over a 5-year period, so that the total number of criminal investigators will increase from its base of about 54 in fiscal year 1990 to at least 72 in fiscal year 1991, 110 in fiscal year 1992, 123 in fiscal year 1993, 160 in fiscal year 1994, and 200 criminal investigators in fiscal year 1995.

It also allows, over the next 5 years, for the increase in staff necessary to support additional criminal investigators.

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The purpose of this section is to ensure that EPA has adequate resources to enforce the criminal provisions of our environmental laws. The backbone of EPA's criminal enforcement program is its investigators, who provide EPA with the ability to collect evidence about environmental violations. This section is intended to give EPA the number of investigators needed to enforce the law.

The proposed increase in criminal investigators reflects the view of law enforcement officials at the Federal, State, and local levels that criminal enforcement motivates people and companies to comply with environmental laws in a way that civil judicial and administrative enforcement rarely can do. According to EPA Assistant Administrator for Enforcement James Strock:

> While both corporations and individuals pay penalties, only individuals can go to prison—a sanction that no one can pass along to the American consumer as just another cost of doing business.

The current number of criminal investigators is clearly inadequate for several reasons.

First, the nature of the criminal enforcement of environmental laws has changed in the last several years. Congress, in reauthorizing environmental legislation, has increased emphasis on criminal enforcement, including the upgrading of many offenses from misdemeanors to felonies.

Second, according to EPA, considerably more demands are being placed on its criminal enforcement program. As public awareness of environmental violations grows, EPA is receiving a steady stream of tips and leads concerning environmental violations from the public, from within EPA programs, and from States, In addition, EPA is working to better focus its criminal enforcement efforts on repeat civil offenders, as well as specific industries which have not corrected their most harmful environmental practices. Cases such as these require substantial resources.

Third, there is a need to help States and localities with their enforcement program. While some States have fully developed programs (for example, New Jersey has 37 investigators), most programs would benefit from assistance from the Federal Government. The National District Attorneys' Association (NADA) has emphasized the need for Federal-local teams to investigate environmental crimes, such as the task forces used by the Drug Enforcement Administration which result in the conviction of significantly more drug offenders than would be possible by Federal agents alone. One such environmental enforcement task force has been implemented in Seattle, Washington, for the purpose of investigation, on a regional basis, significant pollution crimes.

Fourth, an increase in the number of criminal investigators can result in a greater degree of fairness to the regulated community. In many enforcement situations, EPA has discretion to handle a case through the criminal, civil or adminstrative route. Without any clear understanding about how EPA will handle a particular violation, the regulated community has little guidance for establishing internal controls and self-policing activities. Increased enforcement resources will enable EPA to develop a more consistent and equitable approach to handling enforcement cases.

The reported bill is intended to assure that the EPA has all the tools necessary for successful criminal prosecutions under the enviromental laws, especially additional or special laboratory facilities. As the case load increases, more laboratory facilities may be needed.

It is clear that criminal enforcement involves special training in laboratory procedures and evidence collection. Many State and local laboratory personnel do not have the training necessary to support criminal investigations and, therefore, EPA facilities may assist in State and local cases. It is essential that EPA provide a leadership role in developing the best environmental forensic laboratories and provide necessary technical assistance to States and localities.

Finally, this section does not restrict the Administrator's discretion with respect to decisions about the organizational structure of the current or expanded criminal investigator program.

Section 3.—Civil investigators

This section provides for an increase of 50 civil investigators by fiscal year 1991 to assist the EPA Office of Enforcement in the investigation and enforcement of civil authorities of environmental laws.

In fiscal year 1990, EPA has approximately 21 civil investigators devoted exclusively to enforcement of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA has found that civil investigators have been extremely useful in examining records and tracking down information and witnesses relative to determining responsibility for these activities. Civil investigators provide critical support for court cases.

This section is intended to expand the use of civil investigators to other environmental media and to provide for investigator training in multi-media skills.

Civil investigators can also help assure compliance with consent agreements which EPA negotiates with violators. The EPA Inspector General has recently issued reports finding that consent agreements are not being enforced and that, because of inadequate follow-up enforcement efforts by EPA, violators were able to delay or avoid compliance and to do so without penalties. While there may be several reasons for this lack of follow-up, it is clear that there is simply not enough manpower devoted to the enforcement effort. The addition of these civil investigators provides a small, but immediate, step to address this issue.

Expanding the number of civil investigators can also improve the efficiency of environmental enforcement. Currently, EPA is often required to hire outside investigators or experts to help develop cases. EPA's reliance on outside contractors and consultants is often not cost effective. This section is intended to assure that the reliance on outside consultants is decreased.

Finally, this section does not restrict the Administrator's discretion with respect to decisions about the organizational structure of the current or expanded civil investigator program.

Section 4.—National Training Institute

This section provides for the creation of a National Enforcement Training Institute within the EPA Office of Enforcement.

The National Enforcement Training Institute will be an umbrella educational institute at which EPA will conduct comprehensive criminal and civil environmental enforcement training for Federal, State, and local personnel. The Institute will provide a comprehensive and integrated approach to training, in which enforcement personnel are trained in a range of specialties. In this way, inspectors, case development technical personnel, engineers, investigators, laboratory experts and attorneys will be better able to work together as members of a case development team.

At a hearing before the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, law enforcement officials all emphasized that environmental enforcement is currently hampered by a lack of training. This training is particularly complicated because there is often a need to be familiar with a wide range of environmental laws; disciplines (e.g. chemistry, toxicology, biology, geology, and hydrology); sophisticated equipment (e.g. air monitoring devices); complex sample methodology; and use of protective clothing.

While there are currently three EPA training programs, EPA, State and local officials all agree that the resources of these programs cover only limited areas, do not provide comprehensive training, and train only a fraction of those involved in enforcement. EPA should coordinate the Institute's training programs with current programs and consolidate resources, where such consolidation would provide for more effective training.

The EPA should consult with and involve both State and local officials in the decisions about the structure and programs of the Institute, including the National Association of Attorneys General, the National Association of District Attorneys, the four regional environmental projects, and other state and local enforcement organizations from all areas of the country.

Section 5.—Fund

This section provides for the establishment, within the Department of the Treasury of the United States, of a Pollution Prosecution Fund to support implementation of the expanded enforcement program.

The Pollution Prosecution Fund is to be comprised of 50 percent of the penalties deposited in the Treasury in the previous fiscal year, commencing with fiscal year 1990, from civil and criminal penalties imposed in connection with the violations of laws administered by the Environmental Protection Agency (other than moneys specifically earmarked by law for other purposes), up to limits specified in this section. For fiscal year 1991, the money deposited in the fund will be 50 percent of the penalties specified above, or $13 million, whichever is less. The amount of moneys to be transferred to the fund increases to $18 million in fiscal year 1992, $20 million in 1993, $26 million in 1994, and $33 million in 1995.

The laws administered by the EPA referred to in this section include the Clean Water Act, the Clean Air Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act and the Safe Drinking Water Act. Another bill reported out by the Environment and Public works Committee, S. 1076, requires that 50 percent of penalties, up to limits specified, be deposited in an Environmental Trust Education Fund. When both bills are enacted, 50 percent of the total penalties are available for each fund, up to the limits specified in each bill (e.g., if $40 million were collected in penalties in 1990, $13 million would be available in 1991 for the Pollution Prosecution Fund and $15 million for the Education Fund in 1991).

Section 6.—Authorization

This section authorizes the appropriations necessary to carry out the requirements of the reported bill. In the event that the moneys deposited in the Pollution Prosecution Fund are less than amounts specified in section 5, appropriations are authorized from the general revenues to account for the difference.

HEARINGS

The full Environment and Public Works Committee held a hearing on the "Pollution Prosecution Act" (S. 2176) on April 24, 1990. Witnesses at the hearing included EPA Assistant Administrator James Strock, State and local enforcement officials, a public interest group, and a private attorney whose law firm represents major industries and individuals affected by the environmental laws.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the Rules of the Committee on Environment and Public Works require that any rollcall vote taken during consideration of the reported bill be announced in the report.

The Committee on Environment and Public Works considered S. 2176 at a meeting on June 12, 1990. The Committee agreed to amendments to the bill and ordered the bill, as amended, reported to the Senate by voice vote. No rollcall votes were taken during consideration of the bill.

REGULATORY IMPACT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill. The reported bill does not include any new regulatory authority.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Act requires that each report contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That Report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 20, 1990.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2176, the Pollution Prosecution Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2176.
2. Bill title: Pollution Prosecution Act of 1990.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, June 12, 1990.
4. Bill purpose: S. 2176 would require the Environmental Protection Agency (EPA) to increase the number of civil and criminal investigators on its staff and would establish a National Enforcement Training Institute. The bill also would establish a Pollution Prosecution Fund within the Treasury and would authorize the appropriation of funds from that fund and from general revenues to carry out the activities required by the bill.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization level	13	18	20	26	33
Estimated outlays	11	17	20	25	32

The costs of this bill fall within budget function 300.

Basis of Estimate

For the purposes of this estimate, it is assumed that S. 2176 will be enacted late in fiscal year 1990 and that the full amounts authorized will be appropriated for each fiscal year. Outlays have been estimated on the basis of historical spending patterns for similar programs.

The amounts authorized for appropriation would be appropriated from a fund created by the bill or from the general fund of the Treasury. The bill would establish the Pollution Prosecution Fund within the Treasury and would require that a certain amount of penalties collected from violations of civil and criminal environmental statutes be transferred to the fund annually in fiscal years 1991 through 1995. The amount of penalty collections that would be transferred would be the lower of two amounts:

(1) the amount authorized for appropriation each year, or (2) 50 percent of the penalties collected from the enforcement of environmental statutes in the previous year. To the extent that the penalty collections transferred to the fund were lower than the amount authorized for appropriation, the bill would authorize the appropriation of the difference from general revenues.

In 1988 and 1989, EPA collected an average of $30.5 million in civil and criminal penalties. If this level of collections were maintained, an appropriation of general revenues would be required to reach the authorized amount each year beginning in 1992. However, the additional investigators required by this bill would likely increase the number of cases prosecuted. Depending on the type cases and the sentence or settlement in each case, the additional workload could result in additional penalty collections and reduce or eliminate the need for appropriations from general revenues.

6. Estimated cost to State and local governments: State and local governments could incur costs to reimburse the federal government if they choose to have their employees trained at the National Enforcement Training Institute. Any potential costs would depend on the costs of operating the institute and whether and how much the federal government would charge for this service.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Laura Carter.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires publication of any changes in existing law by the reported bill. The bill does not change existing law.

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